

SIKKIM



GOVERNMENT

GAZETTE

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**GOVERNMENT OF SIKKIM
LAW DEPARTMENT
GANGTOK**

No.: 3/LD/RC/18

Dated: 21/11/2018

NOTIFICATION

The following Act which has been promulgated by His Excellency the President of India on the 11th day of August, 2018 and published in the Gazette of India, Extraordinary PART-II SECTION-1 dated New Delhi, the 11th August, 2018 is hereby re-published for general information:-

**MINISTRY OF LAW AND JUSTICE
(Legislative Department)**

New Delhi, the 11th August, 2018/Shravana 20, 1940 (Saka)

The following Act of Parliament received the assent of the President on the 11th August, 2018, and is hereby published for general information:—

**THE CRIMINAL LAW (AMENDMENT) ACT, 2018
NO. 22 OF 2018**

[11th August, 2018.]

An Act further to amend the Indian Penal Code, Indian Evidence Act, 1872, the Code of Criminal Procedure, 1973 and the Protection of Children from Sexual Offences Act, 2012.

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

CHAPTER I PRELIMINARY

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| <p>1. (1) This Act may be called the Criminal Law (Amendment) Act, 2018.</p> <p>(2) It shall be deemed to have come into force on the 21st day of April, 2018.</p> | <p>Short title and commencement.</p> |
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CHAPTER II
AMENDMENTS TO THE INDIAN PENAL CODE

- Amendment of section 166A. 2. In the Indian Penal Code (hereafter in this Chapter referred to as the Penal Code), in 45 of 1860. section 166A, in clause (c), for the words, figures and letters "section 376B, section 376C, section 376D", the words, figures and letters "section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB" shall be substituted.
- Amendment of section 228A. 3. In section 228A of the Penal Code, in sub-section (1), for the words, figures and letters "section 376A, section 376B, section 376C, section 376D", the words, figures and letters "section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB" shall be substituted.
- Amendment of section 376. 4. In section 376 of the Penal Code,—
- (a) in sub-section (1), for the words "shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine", the words "shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine" shall be substituted;
- (b) in sub-section (2), clause (i) shall be omitted;
- (c) after sub-section (2), the following sub-section shall be inserted, namely:—
- “(3) Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:
- Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:
- Provided further that any fine imposed under this sub-section shall be paid to the victim.”.
- Insertion of new section 376AB. 5. After section 376A of the Penal Code, the following section shall be inserted, namely:—
- Punishment for rape on woman under twelve years of age. “376AB. Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim".

Insertion of
new sections
376DA and
376DB.

6. After section 376D of the Penal Code, the following sections shall be inserted, namely:—

Punishment for
gang rape on
woman under
sixteen years of
age.

"376DA. Where a woman under sixteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim".

Punishment for
gang rape on
woman under
twelve years of
age.

376DB. Where a woman under twelve years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine, or with death:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim".

Amendment of
section 376E.

7. In section 376E of the Penal Code, for the word, figures and letter "section 376D", the words, figures and letters "section 376AB or section 376D or section 376DA or section 376DB," shall be substituted.

CHAPTER III
AMENDMENTS TO THE INDIAN EVIDENCE ACT, 1872

- 1 of 1872. 8. In section 53A of the Indian Evidence Act, 1872 (hereafter Amendment of in this Chapter referred to as the Evidence Act), for the section 53A. words, figures and letters "section 376A, section 376B, section 376C, section 376D", the words, figures and letters "section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB" shall be substituted.
9. In section 146 of the Evidence Act, in the proviso, for the Amendment of words, figures and letters "section 376A, section 376B, section section 146. 376C, section 376D", the words, figures and letters "section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB" shall be substituted.

CHAPTER IV
AMENDMENTS TO THE CODE OF CRIMINAL PROCEDURE, 1973

- 2 of 1974. 10. In the Code of Criminal Procedure, 1973 (hereafter in this Amendment of Chapter referred to as the Code of Criminal Procedure), in section 26. section 26, in clause (a), in the proviso, for the words, figures and letters "section 376A, section 376B, section 376C, section 376D", the words, figures and letters "section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB" shall be substituted.
11. In section 154 of the Code of Criminal Procedure, in sub-section (1),—
- (i) in the first proviso, for the words, figures and letters "section Amendment of 376A, section 376B, section 376C, section 376D", the section 154. words, figures and letters "section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB," shall be substituted;
 - (ii) in the second proviso, in clause (a), for the words, figures and letters "section 376A, section 376B, section 376C, section 376D", the words, figures and letters "section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB," shall be substituted.
12. In section 161 of the Code of Criminal Procedure, in sub-section Amendment of (3), in the second proviso, for the words, figures and letters section 161. "section 376A, section 376B, section 376C, section 376D", the words, figures and letters "section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB" shall be substituted.

- Amendment of section 164. 13. In section 164 of the Code of Criminal Procedure, in sub-section (5A), in clause (a), for the words, figures and letters "section 376A, section 376B, section 376C, section 376D", the words, figures and letters "section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB" shall be substituted.
- Amendment of section 173. 14. In section 173 of the Code of Criminal Procedure,—
 (i) in sub-section (1A), for the words "rape of a child may be completed within three months", the words, figures and letters "an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E of the Indian Penal Code shall be completed within two months" shall be substituted; 45 of 1860.
 (ii) in sub-section (2), in clause (i), in sub-clause (h), for the word, figures and letters "section 376, 376A, 376B, 376C, 376D", the word, figures and letters "sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB" shall be substituted.
- Amendment of section 197. 15. In section 197 of the Code of Criminal Procedure, in sub-section (1), in the *Explanation*, for the words, figures and letters "section 376A, section 376C, section 376D", the words, figures and letters "section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB" shall be substituted.
- Amendment of section 309. 16. In section 309 of the Code of Criminal Procedure, in sub-section (1), in the proviso, for the words, figures and letters "section 376A, section 376B, section 376C or section 376D of the Indian Penal Code, the inquiry or trial shall, as far as possible," the words, figures and letters "section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA or section 376DB of the Indian Penal Code, the inquiry or trial shall" shall be substituted. 45 of 1860.
- Amendment of section 327. 17. In section 327 of the Code of Criminal Procedure, in sub-section (2), for the words, figures and letters "section 376A, section 376B, section 376C, section 376D", the words, figures and letters "section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB" shall be substituted.
- Amendment of section 357B. 18. In section 357B of the Code of Criminal Procedure, for the words, figures and letters "under section 326A or section 376D of the Indian Penal Code", the words, figures and letters "under section 326A, section 376AB, section 376D, section 376DA and section 376DB of the Indian Penal Code" shall be substituted. 45 of 1860.

19. In section 357C of the Code of Criminal Procedure, for the Amendment of figures and letters "376A, 376B, 376C, 376D", the figures and section 357C. letters "376A, 376AB, 376B, 376C, 376D, 376DA, 376DB" shall be substituted.

20. In section 374 of the Code of Criminal Procedure, after sub- Amendment of section (3), the following sub-section shall be inserted, section 374. namely:—

45 of 1860.

"(4) When an appeal has been filed against a sentence passed under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code, the appeal shall be disposed of within a period of six months from the date of filing of such appeal".

21. In section 377 of the Code of Criminal Procedure, after sub- Amendment of section (3), the following sub-section shall be inserted, section 377. namely:—

45 of 1860.

"(4) When an appeal has been filed against a sentence passed under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code, the appeal shall be disposed of within a period of six months from the date of filing of such appeal".

22. In section 438 of the Code of Criminal Procedure, after sub- Amendment of section (3), the following sub-section shall be inserted, section 438. namely:—

45 of 1860.

"(4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code".

23. In section 439 of the Code of Criminal Procedure,—

Amendment of section 439.

(a) in sub-section (1), after the first proviso, the following proviso shall be inserted, namely: —

45 of 1860.

"Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code, give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application";

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) The presence of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code.”. 45 of 1860.

Amendment of
First Schedule.

24. In the First Schedule to the Code of Criminal Procedure, under the heading “I.— OFFENCES UNDER THE INDIAN PENAL CODE”, —

(a) for the entries relating to section 376, the following entries shall be substituted, namely:—

Section	Offence	Punishment	Cognizable or Non-cognizable	Bailable or Non-bailable	By what Court triable
1	2	3	4	5	6
“376	Rape.	Rigorous imprisonment of not less than 10 years but which may extend to imprisonment for life and with fine.	Cognizable	Non-bailable	Court of Session.
	Rape by a police officer or a public servant or member of armed forces or a person being on the management or on the staff of a jail, remand home or other place of custody or women's or children's institution or by a person on the management or on the staff of a hospital, and rape committed by a person in a position of trust or authority towards the person raped or by a near relative of the person raped.	Rigorous imprisonment of not less than 10 years but which may extend to imprisonment for life which shall mean the remainder of that person's natural life and with fine.	Cognizable	Non-bailable	Court of Session.

1	2	3	4	5	6
	Persons committing offence of rape on a woman under sixteen years of age.	Rigorous imprisonment for a term which shall not be less than 20 years but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life and with fine.	Cognizable	Non-bailable	Court of Session",

(b) after the entries relating to section 376A, the following entries shall be inserted, namely:—

1	2	3	4	5	6
"376AB	Person committing an offence of rape on a woman under twelve years of age.	Rigorous imprisonment of not less than 20 years but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life and with fine or with death.	Cognizable	Non-bailable	Court of Session",

(c) after the entries relating to section 376D, the following entries shall be inserted, namely:—

1	2	3	4	5	6
"376DA	Gang rape on a woman under sixteen years of age.	Imprisonment for life which shall mean imprisonment for the remainder of that person's natural life and with fine.	Cognizable	Non-bailable	Court of Session.
376DB	Gang rape on woman under twelve years of age.	Imprisonment for life which shall mean imprisonment for the remainder of that person's natural life and with fine or with death.	Cognizable	Non-bailable	Court of Session".

CHAPTER V
AMENDMENT TO THE PROTECTION OF CHILDREN FROM SEXUAL
OFFENCES ACT, 2012

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|--|-----|---|-----------------------|
| Amendment of
section 42 of
Act No.32 of
2012. | 25. | In section 42 of the Protection of Children from Sexual Offences Act, 2012, for the figures and letters "376A, 376C, 376D", the figures and letters "376A, 376AB, 376B, 376C, 376D, 376DA, 376DB" shall be substituted. | |
| Repeal and
savings.

45 of 1860.
1 of 1872.
2 of 1974.
32 of 2012. | 26. | (1) The Criminal Law (Amendment) Ordinance, 2018 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Indian Penal Code, the Indian Evidence Act, 1872, the Code of Criminal Procedure, 1973 and the Protection of Children from Sexual Offences Act, 2012, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of those Acts, as amended by this Act. | Ord. No.2
of 2018. |

DR . G. NARAYANA RAJU,
Secretary to the Govt. of India.

K. C. BARPUNGPA (SSJS)
L.R.-cum-SECRETARY
LAW DEPARTMENT
File No.: 16(413)/L/18 PART-II

